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MEMORANDUM

TO: Legislative Audit Committee Members

FROM: Jim Pellegrini, Deputy Legislative Auditor, Performance Audits

DATE: June 2001

RE: Follow-up Performance Audit
Foster Care Review Process
Montana Supreme Court and Department of Public Health and Human Services

INTRODUCTION

This memorandum describes results of a follow-up review of the performance audit of the Foster Care Review Process (98SP-79). Agencies involved in foster care reviews are the Supreme Court and the Department of Public Health and Human Services (DPHHS). The report, issued in December 1998, contained recommendations for administering foster care reviews.

Our objective for this audit follow-up was to evaluate the implementation status of recommendations presented in the report. To meet our objectives we interviewed Supreme Court and DPHHS personnel, reviewed agency documentation, and monitored development of draft legislation that would address the recommendations.

BACKGROUND

Federal and state law requires a review of all foster care placements within six months of a placement, and at least every six months thereafter. From 1981 to 1993, DPHHS administered Foster Care Review Committees (FCRC) in all judicial districts. FCRC membership included representatives from DPHHS, youth court, the local school district, foster parents, and another representative knowledgeable about foster care.

In 1993, the legislature enacted the Local Citizen Review Board Pilot Program (CRB), which created local citizen review boards as an alternative to FCRC reviews in designated judicial districts. The CRB program, within the Supreme Court, is responsible for administering reviews conducted by local citizen review boards. The CRB includes a program manager responsible for overall program operations, and staff coordinators who schedule reviews and assist local boards. Members of local boards are volunteers selected from the respective judicial district, and are recruited from groups with knowledge of or interest in foster care and child welfare. Statute prohibits DPHHS personnel from CRB membership.

CRBs were initially implemented in following judicial districts:

- Second Judicial District encompassing Silver Bow County
- Fourth Judicial District encompassing Missoula and Mineral Counties

- Eighteenth Judicial District encompassing Gallatin County

CRBs subsequently expanded to the:

- First Judicial District encompassing Lewis and Clark and Broadwater Counties
- Eighth Judicial District encompassing Cascade County

FCRCs continued to conduct reviews in the remaining seventeen judicial districts.

SUMMARY

The report contained five recommendations:

- Two recommendations to the legislature related to creation of a single foster care review process for the state, and clarifying the role of the entity conducting reviews.
- Two recommendations to a new administrative entity related to confidentiality and agency operations.
- One recommendation to the new administrative entity and the department related to interagency communication and coordination.

The Supreme Court and DPHHS have worked cooperatively to draft legislation creating a single foster care review process for the state. As of January 2001, proposed legislation would give the CRB program responsibility for administering foster care reviews. Consequently, our follow-up focused on CRB implementation of recommendations made to the new administrative entity. Since DPHHS would have no substantive responsibility for administering reviews, the department has not expended resources to address those recommendations.

<u>Recommendation Status</u>	
Pending Implementation	2
Partially Implemented	1
Not Implemented	1
<u>Implemented</u>	<u>1</u>
Total	5

Conclusion

Both the Supreme Court and Department of Public Health and Human Services have improved interagency communication, as evidenced by their cooperative efforts to draft legislation that would create a single foster care review process for the state. Additionally, the CRB has developed policies, procedures, and a training curriculum to address audit recommendations. However, the CRB has not fully addressed recommendations relating to confidentiality of case information.

At this time, a more intensive follow-up of foster care review activities would have limited benefit because of pending legislation, and time required for an agency to fully implement draft legislation. However, additional follow-up work may be warranted pending legislative decisions regarding Montana's

process(es) for reviewing foster care cases. We recommend conducting additional follow-up on the implementation of the recommendations six to twelve months after legislative action to address the first two recommendations. This timeframe would give the agency responsible for conducting foster care reviews time to become fully operational and our office the opportunity to evaluate established operations.

RECOMMENDATION REVIEW

The following sections provide a synopsis of audit findings, audit recommendations, and a description of the implementation status for each recommendation.

The Two Review Processes Do Not Assure Consistency Or Equality In Foster Care Reviews

Both systems met the statutory requirements for reviews, and the audit did not identify significant differences in outcomes of foster care cases reviewed by either system. However, the two processes serve different functions and purposes. FCRC reviews focused on department compliance with the case plan and appropriateness of placements, and provided general direction to the department. FCRCs were noted for good communication and coordination with DPHHS, but some review participants and district court judges perceived FCRCs as being less independent than CRBs in providing a critical review of department foster care activities. By including a department representative as an FCRC member, as well as the department's role administering FCRCs increased perception that FCRCs were less independent.

Since the CRB program administered foster care reviews and did not include a department representative as a member of a local board, review participants and district court judges generally viewed CRBs as more independent and provided greater oversight over foster care cases. In judicial districts with CRBs, judges said CRBs were more responsive than FCRCs in meeting judicial needs. CRB reviews also excluded all attendees, including department representatives, from the deliberation process. During the deliberation process, CRB board members discussed information presented by participants and developed formal recommendations for the department and other case participants, without direct DPHHS input. Consequently, DPHHS personnel viewed CRB reviews as less effective than FCRC reviews at working fully with the department to find solutions to problems.

Having two different review processes did not assure consistency or equality in foster care reviews across the state, in content, practice, or purpose. Having one foster care review system encompassing the best qualities of both systems would best serve the foster care system and maintain the appearance of independence.

Recommendation #1:

We recommend the legislature:

- A. Change the make-up of the foster care review panels, which would replace existing FCRCs and CRBs in all judicial districts to incorporate aspects of both FCRC and CRB memberships.
- B. Require the administrative entity involved with the new foster care review panels to establish procedures for [Department] input into review panel deliberations while maintaining the appearance of independence.

The audit presented three options for legislative consideration.

Option 1: Place the review panel entity within DPHHS. This option appears to have less start-up and operational costs since the department would be capable of using existing administrative structures, equipment, and facilities. This option has the least appearance of independence.

Option 2: Administratively attach the review panel entity to DPHHS. Other administrative and quasi-judicial boards in the state, such as the Board of Pardons and Parole and the Petroleum Tank Release Compensation Board use this organizational structure. This option permits the review panel entity to use department administrative processes, management information systems, and other department resources, while remaining an autonomous entity.

Option 3: Place the review panel entity under the Supreme Court, similar to the existing CRB structure. This option provides the greatest level of independence since the entity would have no formal ties with the department. This option could use existing Supreme Court resources. However, existing CRB resources are limited to five judicial districts. This option would require additional equipment, staffing, and other operational expenses.

Implementation of this recommendation is pending legislative action.

The Supreme Court and DPHHS have coordinated draft legislation for the 2001 Legislature to implement Option 3. Attached is a copy of the draft legislation.

The Scope of Foster Care Reviews Should Be Clarified

Montana statutes indicate the scope of FCRC and CRB reviews is primarily oversight of department activities. Statutes also authorized local CRBs to make findings and recommendations regarding “other problems, solution, or alternatives” a local board believes should be explored. CRB staff and district court judges interpreted this language as giving local boards broad authority to examine and make recommendations related to all department activities, including assessing and making recommendations about individual medical and mental health evaluations and treatment. In some instances, local CRBs appeared to be taking more of a case management role than an oversight role. Ultimately, these practices could impair the board’s ability to provide objective and independent oversight of foster care cases.

Recommendation #2:

We recommend the legislature clarify the oversight role of review panels in foster care placements.

Implementation of this recommendation is pending legislative action.

Proposed legislation provides some clarification of the scope of foster care reviews. Draft legislation still permits local boards to make recommendations regarding other problems, solutions, or alternatives without defining what this language means. Therefore, the proposed legislation does not fully address the audit findings.

Identification and Involvement of Interested Parties in Reviews

The department did not always invite to FCRC reviews all persons significantly involved in a foster care case, which increased the risk FCRCs did not have critical information. Conversely, CRB reviews were more inclusive of persons involved in a child’s care. However, in some instances the CRB program invited persons whose presence at the entire hearing was questionable. Review attendees were present for all testimony and had access to confidential information unrelated to their role in the foster care case. These practices increased the risk that confidential information was compromised and potentially limited full participation by all parties.

Recommendation #3:

We recommend the entity administering the new foster care review panels:

- A. Establish policies and procedures that identify interested parties and ensure their proper level of participation.
- B. Establish policies and procedures which ensure the foster care review process protects the confidentiality of information and participants.

The Supreme Court has not implemented this recommendation.

Since the original audit was released, the CRB has developed a policy and procedure manual for directing agency and review activities. According to new CRB policies, local boards may disclose to any person attending a review confidential case information. This policy may provide attendees with access to confidential information unrelated to their role in a case. That is, the CRB grants attendees access to confidential information based on their presence at a review, not their need to know about confidential information.

These policies may compromise confidential case information, potentially increase the risks to a child or attendee's safety, and discourage full participation by some participants.

Policies and Procedures for CRB Operations and a Training Curriculum

The audit identified weaknesses in CRB practices and activities, resulting from a lack of clear policies and procedures. Additional training for local board members about department activities and practices was also identified as an area for improvement. These concerns appeared to reduce the credibility of CRB recommendations.

Recommendation #4:

We recommend the administrative entity for the review panels:

- A. Establish a formal comprehensive policies and procedures manual for panel operations.
- B. Develop and implement a training curriculum which addresses all aspects of foster care, including [Department] activities and capabilities.

The Supreme Court has implemented this recommendation.

The policy and procedure manual provides general guidance to CRB activities. The CRB also provides members with training and information about department policies and practices, as well as a variety of other subjects related to foster care issues.

Interagency Coordination and Management Information

Poor communication and coordination between CRB and DPHHS management appeared to limit the effectiveness of the review process, and created conflict and distrust between CRB and department personnel. Although the two agencies have similar goals, (to serve the best interests of children in foster care), the two agencies had not coordinated development of measurable goals and objectives.

Recommendation #5:

We recommend:

- A. The administrative entity for the review panels and the [Department] jointly develop and implement formal and informal communication strategies that help ensure effective inter-agency coordination.

- B. The administrative entity for the review panels and the [Department] jointly develop measurable objectives and outcomes, as well as implement methodologies for evaluating review panel activities.

The CRB and DPHHS have partially implemented this recommendation.

The Supreme Court and department have improved coordination among senior level managers, and the two agencies have cooperatively drafted legislation for presentation to the 2001 Legislature, which addresses the first two recommendations. Cooperation between CRB and DPHHS local office personnel also appears to be improving.

The two agencies have not jointly developed measurable outcomes and objectives. However, it is reasonable they would not expend extensive resources to address this recommendation until the legislature addresses the first recommendation and creates a single foster care review process for the state. The CRB program has been developing measurable goals and objectives.

2001 Legislative Update:

SB283 was initially drafted to create a single foster care review system, but was subsequently amended to continue each of the existing systems. The amended bill included language to clarify the scope and nature of CRB reviews. SB283 was signed into law by the Governor. Although the legislation may address the audit recommendation that the legislature create one system for reviewing all foster care cases in the state.